UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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| LUIS FERNANDEZ | : | |
| | : | PRISONER |
| v. | : | Case No. 3:02cv2252(CFD) |
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| JOHN ARMSTRONG, et al.[1] | : | |

RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff, Luis Fernandez, is currently confined at the State of Connecticut MacDougall Correctional Institution, in Suffield, Connecticut. He commenced this civil rights action pursuant to 28 U.S.C. § 1915. He alleges that in August, 2002, while he was confined at the Cheshire Correctional Institution, the defendants failed to provide him with items necessary to enable him to brush his teeth and to shower and failed to provide him with postage-paid envelopes in which to mail documents to the court. Pending before the court is the defendants' motion for summary judgment. For the reasons set forth below, the motion is granted.

I. Standard of Review

"The trial court's task at the summary judgment motion stage of the litigation is carefully limited to discerning whether

[1]The defendants named in the amended complaint are: Commissioner John Armstrong, Warden Hector Rodriguez, Grievance Coordinator Ahmed, C.T.O. Wanda Booker, Counselor Gallick and Unit Manager Hannah. They were all employed by the Connecticut Department of Correction in various capacities at all times relevant to the Plaintiff's complaint.

there are genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined at this point to issue-finding; it does not extend to issue-resolution." Gallo v. Prudential Residential Servs. Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994). The burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See Rule 56(c), Fed. R. Civ. P.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286 (2d Cir. 2002) (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970)). Not all factual disputes are material. The court considers the substantive law governing the case to identify those facts which are material. "[O]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248.

A court must grant summary judgment "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .'" Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). An asserted dispute over a material fact is considered "genuine," so as to defeat the motion for summary judgment, "if the evidence is such that a reasonable jury could return a verdict for the non-moving

party." McCarthy v. American Int'l Group, Inc., 283 F.3d 121, 124 (2d Cir. 2002).

Even though the burden is on the moving party to demonstrate the absence of any genuine factual dispute, the party opposing summary judgment "may not rest upon mere conclusory allegations or denials, but must bring forward some affirmative indication that his version of relevant events is not fanciful." Podell v. Citicorp Diners Club, Inc., 112 F.3d 98, 101 (2d Cir. 1997) (internal quotation marks and citations omitted). It "'must do more than simply show that there is some metaphysical doubt as to the material facts.'" Caldarola v. Calabrese, 298 F.3d 156, 160 (2d Cir. 2002) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)). The non-moving party "may not rely on conclusory allegations or unsubstantiated speculation." Fujitsu Ltd. v. Federal Express Corp., 247 F.3d 423, 428 (2d Cir. 2002) (internal quotation marks and citation omitted). Instead, the non-moving party must produce admissible evidence that supports its pleadings. See First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 289-90 (1968). A "'mere existence of a scintilla of evidence' supporting the non-movant's case is also insufficient to defeat summary judgment." Niagara Mohawk Power Corp. v. Jones Chem., Inc., 315 F.3d 171, 175 (2d Cir. 2003) (quoting Anderson, 477 U.S. at 252).

In reviewing a motion for summary judgment the court resolves all ambiguities and draws all inferences in favor of the nonmoving party. See Niagara Mohawk, 315 F.3d at 175. Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992). Where one party is proceeding pro se, the court reads the pro se party's papers liberally and interprets them to raise the strongest arguments suggested therein. See Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994). Despite this liberal interpretation, however, a "bald assertion," unsupported by evidence, cannot overcome a properly supported motion for summary judgment. Carey v. Crescenzi, 923 F.2d 18, 21 (2d Cir. 1991). A motion for summary judgment cannot be defeated "merely . . . on the basis of conjecture or surmise." Trans Sport, Inc. v. Starter Sportswear, Inc., 964 F.2d 186, 188 (2d Cir. 1992) (citation and internal quotation marks omitted).

II. Facts[2]

On August 7, 2002, the plaintiff Luis Fernandez filed a prison grievance claiming that on July 29, 2002, he had requested soap, a "care package"[3] and postage-paid envelopes from defendant Booker. Fernandez claimed that he did not have sufficient funds in his prisoner account to purchase hygiene items from the commissary. Defendant Warden Rodriguez denied the grievance on September 12, 2002, because as of August 7, 2002, Fernandez did not meet the indigency standard necessary to receive free soap and a "care package". Under State of Connecticut Department of Correction Administrative Directive 6.10(3)(C), an indigent inmate is defined as "[a]n inmate who has less than five dollars on account at admission or whose account has not exceeded five dollars for the previous 90 days."

On August 13, 2002, Fernandez submitted an inmate request to defendant Gallick for a "care package," special soap and postage-

[2]The facts are taken from the defendants' Local Rule 56(a)1 Statement of Material Facts Not in Dispute [doc. # 40-2]; the plaintiff's Local Rule 56(a)2 Statement [doc. # 42]; the plaintiff's Affidavit and exhibits attached to the affidavit [doc. # 45-2], the Affidavit of Jonathan Hall and the exhibits attached to the affidavit [doc. # 40-4] and the exhibits attached to the plaintiff's amended complaint [doc. # 9].

[3]A "care package" apparently contains personal hygiene items.

paid legal and "social" envelopes[4]. That same day, Gallick denied Fernandez's request because he did not meet the indigency standard. Fernandez wrote to Gallick again on August 14, 2002, with the same requests. That same day, defendant Ahmed provided the plaintiff with a "care package" including a comb, soap, shampoo, toothpaste and a toothbrush.

On August 19, 2002, Fernandez filed an emergency grievance stating that Gallick had not provided him envelopes and bath soap in response to his August 14, 2002 request. Defendant Rodriguez rejected the grievance because it was not an emergency and noted that Fernandez had received a "care package" on August 14, 2002.

Under State of Connecticut Department of Correction Administrative Directive 10.7(4)(D), every inmate is responsible for paying "personal mailing expenses," unless an inmate is indigent. "An indigent inmate as defined in Administrative Directive 6.10 . . . shall be permitted two (2) free social letters each week, and five (5) letters per month addressed to the court or attorneys. . . ." On August 22, 2002, Fernandez received five legal envelopes with free postage. On August 29, 2002, Fernandez received two "social" envelopes with free postage and one bar of soap. On September 5, 2003, Fernandez received two "social" envelopes and two legal envelopes with free postage.

[4]"Social" envelopes are for mailing non-legal correspondence.

On September 9, 2003, Fernandez received two "social" envelopes with free postage and a bar of soap.

III. Discussion

The defendants move for summary judgment on seven grounds. They argue that (1) the Eleventh Amendment bars any claims for damages against the defendants in their official capacities; (2) the State is not a "person" within the meaning of 42 U.S.C. § 1983; (3) the plaintiff fails to state a claim upon which relief may be granted; (4) the court should decline to exercise supplemental jurisdiction over any state law claims asserted against them; (5) the plaintiff has failed to allege the personal involvement of defendant Armstrong in the denial of his requests for hygiene products and envelopes; (6) the plaintiff's request for injunctive relief is moot; and (7) the defendants are protected by qualified immunity.

A. Eleventh Amendment

The defendants first argue that any claims seeking damages against them in their official capacities are barred by the Eleventh Amendment. Generally, a suit for recovery of money may not be maintained against the state itself, or against any agency or department of the state, unless the state has waived its sovereign immunity under the Eleventh Amendment. See Florida Dep't of State v. Treasure Salvors, 458 U.S. 670, 684 (1982). Section 1983 does not override a state's Eleventh Amendment

immunity. See Quern v. Jordan, 440 U.S. 332, 342 (1979). The Eleventh Amendment immunity, which protects the state from suits for monetary relief, also protects state officials sued for damages in their official capacity. See Kentucky v. Graham, 473 U.S. 159 (1985). A suit against a defendant in his official capacity is ultimately a suit against the state if any recovery would be expended from the public treasury. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 n.11 (1984).

Fernandez sues the defendants in their official and individual capacities. To the extent that Fernandez sues the defendants in their official capacities for monetary damages, those claims are barred by the Eleventh Amendment. The motion for summary judgment is granted as to all claims for damages against the defendants in their official capacities.

B. Claims Against State of Connecticut

The defendants next argue that the State of Connecticut is not a "person" within the meaning of 42 U.S.C. § 1983. The Supreme Court has held that the term "person" does not include a state or its agencies. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989). Also, states are protected from suit by the Eleventh Amendment unless they waive its protection. See id. Connecticut has not waived its Eleventh Amendment immunity from suit in this circumstance. See Krozer v. New Haven, 212 Conn. 415, 562 A.2d 1080 (1989), cert denied, 493 U.S.

1036 (1990). Accordingly, to the extent that any of the claims against the defendants may be construed as a claim against the State of Connecticut, those claims are dismissed.

C. Failure to State a Claim

The defendants argue that Fernandez's claims that in August 2002, they deprived him of basic hygiene items and postage-paid envelopes, failed to promulgate directives, and failed to comply with grievance directives do not state a claim upon which relief may be granted. The court will address each claim separately.

1. Hygiene Items

Fernandez alleges that in August 2002, the defendants failed to timely respond to his requests for a package containing hygiene items including a toothbrush, toothpaste, soap and shampoo. The defendants argue that Fernandez's claim does not allege a violation of his Eighth Amendment rights.

The Supreme Court has defined the contours of the Eighth Amendment protection against cruel and unusual punishment, made applicable to the states by the Fourteenth Amendment, as follows: "The Eighth Amendment's bar on inflicting cruel and unusual punishments...'proscribe[s] more than physically barbarous punishments.' It prohibits penalties that are grossly disproportionate to the offense as well as those that transgress today's broad and idealistic concepts of dignity, civilized standards, humanity and decency." Hutto v. Finney, 437 U.S. 678,

685 (1978) (citations omitted). See also Rhodes v. Chapman, 452 U.S. 337, 347 (1981). There is no static test for determining whether conditions of confinement are cruel and unusual. See Rhodes, 452 U.S. at 346. The Eighth Amendment must "draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Id.

The Second Circuit, in addressing the needs protected by the Eighth Amendment, has stated that sentenced prisoners are entitled only to "adequate food, clothing, shelter, sanitation, medical care and personal safety." Wolfish v. Levi, 573 F.2d 118, 125 (2d Cir. 1978), rev'd on other grounds sub nom. Bell v. Wolfish, 441 U.S. 520 (1979); Lareau v. Manson, 651 F.2d 96, 106 (2d Cir. 1981). "To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." Rhodes, 452 U.S. at 347. Not every governmental action affecting the interests or well-being of a prisoner is actionable under the Eighth Amendment. "To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety." Whitley v. Albers, 475 U.S. 312, 319 (1986); see also Gaston v. Coughlin, 249 F.3d 156, 163 (2d Cir. 2001).

To prevail on a claim that conditions of confinement constitute cruel and unusual punishment, an inmate must establish

objective and subjective components of the deliberate indifference standard. See Hathaway v. Coughlin, 37 F.3d 63, 66 (2d Cir. 1994). First, the inmate must show that he has suffered a "sufficiently serious" deprivation in objective terms, that is, that he has been deprived of the minimal necessities of life. Wilson v. Seiter, 501 U.S. 294, 298 (1991). An inmate also must present evidence that, subjectively, the charged prison official acted with "a sufficiently culpable state of mind." Hathaway, 37 F.3d at 66. "[A] prison official does not act in a deliberately indifferent manner unless that official 'knows and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994).

On August 7, 2002, Fernandez submitted a grievance to a grievance coordinator requesting a package containing a tooth brush, toothpaste, soap and shampoo as well as postage-paid envelopes. Fernandez complained that defendant Booker had failed to respond to his prior request for these items[5]. On August 14, 2002, defendant Ahmed provided Fernandez with the hygiene items. Fernandez claims that he was not able to shower or wash for five

[5]Although Fernandez seems to suggest in his affidavit in opposition to the motion for summary judgment at ¶9 that he did not have the hygiene supplies for four months, his grievance states that it was only from July 29, 2002.

days due to the delay in receiving the hygiene items. Fernandez states that he suffered emotional distress as a result of the defendants' actions.

The Second Circuit has held that the deprivation of toiletries, particularly toilet paper, constitutes an unconstitutional condition of confinement in violation of the Eighth Amendment. See Wright v. McMann, 387 F.2d 519 (2d Cir. 1967)(detention of an inmate in strip cell with no toilet paper unconstitutional). Courts, including the Second Circuit, have generally held, however, that temporary deprivations of toiletries does not violate the Eighth Amendment. See Trammell v. Keane, 338 F.3d 155, 165 (2d Cir. 2003) ("[d]eprivation of other toiletries for approximately two weeks--while perhaps uncomfortable--does not pose such an obvious risk to an inmate's health or safety to suggest that the defendants were "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed], and [that they also drew] the inference.") (citing Farmer, 511 U.S. at 837; Lunsford v. Bennett, 17 F.3d 1574, 1579- 80 (7th Cir. 1994)(dismissing claims of inmates denied toilet paper, personal hygiene items and cleaning supplies for 24-hour period); Harris v. Fleming, 839 F. 2d 1232, 1235 (7th Cir. 1988) (holding denial of soap, toothpaste and toothpaste for ten days did not violate the Eighth Amendment); Jackson v. DeTella, 998 F. Supp. 901, 905 (N.D. Ill.

1998) (eight-day deprivation of hygiene items and bedding did not violate prisoner's constitutional rights); Martin v. Lane, 766 F. Supp. 641, 648 (N.D. Ill. 1991) (deprivation of laundry services and hygienic supplies for between three and eighteen days did not constitute a violation of inmate's Eighth Amendment rights); Gilland v. Owens, 718 F. Supp. 665, 685 (W.D. Tenn. 1989)("[s]hort term deprivations of toilet paper, towels, sheets, blankets, . . . toothpaste, toothbrushes, and the like do not rise to the level of a constitutional violation.").

Here, Fernandez filed a grievance on August 7, 2002, complaining that defendant Booker had failed to respond to his July 29, 2002, request for envelopes and personal hygiene supplies. On August 14, 2002, defendant Ahmed provided Fernandez with a package, including toothpaste, a toothbrush, shampoo and soap. Thus, even assuming the truth of Fernandez's allegations, he did not have hygiene items for sixteen days. Fernandez does not allege that he suffered any physical injury as a result. Based on the Second Circuit's holding in Trammel, the court concludes that Fernandez's allegations concerning the denial of hygiene supplies for a relatively short period of time in July and August 2002 do not constitute a serious deprivation of Fernandez's necessities. Thus, the plaintiff's claims fail to state a violation of the Eighth Amendment.

Fernandez also claims that he was unable to shower for approximately five days. Courts have generally held that a temporary deprivation of the opportunity to shower does not violate the Eighth Amendment. See McCoy v. Goord, 255 F. Supp.2d 233, 260 (S.D.N.Y. 2003) ("a two-week suspension of shower privileges does not suffice as a denial of 'basic hygienic needs'") (citation omitted); Roberts v. Snyder, No. CIV. A. 00-742-SLR, 2001 WL 655436, at *5 (D. Del. March 27, 2001) (holding denial of opportunity to shower for five days "did not deprive plaintiff of 'minimal civilized measure of life's necessities.'") (citation omitted); Briggs v. Heidlebaugh, 1997 WL 318081, *3 (E.D. Pa. May 21, 1997) (denial of shower for two weeks not a constitutional violation); Young v. Scully, Nos. 91 Civ. 4332, 91 Civ. 4801, 91 Civ. 6768, 91 Civ. 6769, 1993 WL 88144, at * 4-*5 (S.D.N.Y. Mar. 22, 1993) (deprivation for a period of several days of exercise, shower, hot water, cell cleaning equipment, wardrobe, toiletries and hygiene items did not rise to level of extreme deprivation); Lock v. Clark, No. S90-327, 1992 WL 559660, at *9 (N.D. Ind. March 17, 1992) (no constitutional violation where an inmate was held without soap and hygienic items for seven days, denied access to a shower, given only one and a half rolls of toilet paper, and left to wear only his undershorts); Tinsley v. Vaughn, Civ. A. No. 90-0113, 1991 WL 95323 at *4 (E.D. Pa. May 29, 1991) (confining prisoner to cell and suspending

shower privileges for twelve days not a constitutional deprivation).

Fernandez has submitted no evidence to show that he suffered any physical effects or injuries due to the fact that he did not shower for approximately five days in August 2002. Instead, Fernandez alleges that he suffered emotional distress as a result of the defendants' failure to provide him with a shower for that five-day period. Under 42 U.S.C. § 1997e an inmate is prohibited from bringing an action in federal court which alleges mental or emotional injuries without a prior showing of a physical injury.[6] Because Fernandez has not alleged that he suffered any prior physical injury in conjunction with his claim of emotional distress, his allegations that he suffered emotional distress as a result of his inability to shower for five days fail to state a claim upon which relief may granted.

The court concludes that Fernandez's inability to shower for a short period of time did not amount to a serious deprivation of plaintiff's "minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Accordingly, Fernandez has failed to meet his burden of demonstrating that the

[6] 42 U.S.C. § 1997e(e) provides: "Limitation on recovery.-- No federal civil action may be brought by a prisoner in a jail, prison or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."

defendants violated his rights under the Eighth Amendment. The motion for summary judgment is granted as to this claim.

2. Access to Envelopes

Fernandez also alleges that the defendants failed to provide him with postage-paid envelopes in August 2002. He claims that without envelopes he could not access the courts. The defendants argue that Fernandez has failed to allege that he suffered an actual injury or was prejudiced in any way due to the temporary denial of access to postage-paid envelopes.

"It is well established that inmates have a constitutionally protected right of access to the courts." Smith v. Armstrong, 986 F. Supp. 40, 46 (D. Conn. 1996) (citing Bounds v. Smith, 430 U.S. 817, 822-25 (1977)). In Lewis v. Casey, 518 U.S. 343 (1996), the Supreme Court clarified what is encompassed in an inmate's right of access to the courts and what constitutes standing to bring a claim for the violation of that right. First, the Court held that to show a violation of his right of access to the courts, an inmate must allege an actual injury. Id. at 349. The fact that an inmate may not be able to litigate effectively once his claim is brought before the court is insufficient to demonstrate actual injury. Id. at 355. Rather, the inmate must show that he was unable to file the initial complaint or petition, or that the complaint he filed was so technically deficient that it was dismissed without a

consideration of the merits of the claim. Id. at 351. In addition, the Court observed that "the injury requirement is not satisfied by just any type of frustrated legal claim." Id. at 354.

The record reflects that Fernandez submitted a request to defendant Gallick for legal and "social" envelopes on August 14, 2002, but did not receive any envelopes in response to his request. He filed an emergency grievance on August 19, 2002, complaining that defendant Gallick had not provided him with the envelopes. Defendant Myers rejected the grievance because it did not constitute an emergency. Fernandez then filed an appeal of the grievance on August 23, 2002. The Free Postage Envelope Log for Fernandez's housing unit reflects that Fernandez received five postage-paid legal envelopes on August 22, 2002 and two postage-paid social envelopes on August 29, 2002.

Fernandez does not identify a specific case or claim that he was unable to file or allege that he missed any deadlines in any of his existing cases or that any cases were dismissed due to his lack of access to postage-paid envelopes for approximately a week in August 2002. Fernandez has failed to meet his burden of demonstrating that he suffered an injury as a result of the defendants' failure to provide him with postage-paid legal envelopes in August 2002. Accordingly, the motion for summary

judgment is granted as to the claim of denial of access to the courts.

Fernandez also claims that defendant Gallick failed to provide him with postage-paid envelopes for social correspondence. The Supreme Court has held that prisoners have a First Amendment right to send non-legal mail to individuals outside of prison. See Procunier v. Martinez, 416 U.S. 396, 408-09 (1974). Other Circuit and District Courts have held, however, that the First Amendment does not require prison officials to provide inmates with free postage. See Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003) (prisons and jails have no constitutional duty to subsidize prisoner litigation with unlimited amounts of free postage or legal supplies); Van Poyck v. Singletary, 106 F.3d 1558, 1559-60 (11th Cir.) (indigent inmates do not have right to free postage for personal mail), cert. denied 552 U.S. 856 (1997); Hershberger v. Scaletta, 33 F.3d 955, 956-57 (8th Cir. 1994) (same); Walker v. Litscher, No. 02-C-0430-C, 2003 WL 23200259, at *3 (W.D. Wis. March 14, 2003) (prison officials "refusal to provide [inmate] with free postage does not violate the First Amendment"); Dawes v. Carpenter, 899 F. Supp. 892, 899 (N.D.N.Y. 1995) ("[T]he Constitution does not require the State to subsidize inmates to permit [personal] correspondence.")

DOC records show that at the time of Fernandez's request for postage paid envelopes on August 14, 2002, he was not indigent as that term is defined in the Department of Correction Administrative Directives. Thus, he was not entitled to postage paid-envelopes. After Fernandez met the requirements for indigency on August 20, 2002, prison officials provided him with legal envelopes on August 22, and social envelopes on August 29, 2002. Although Fernandez disputes the issue of whether he was indigent before August 20, 2002, even if he were correct, no constitutional violation occurred for this short period of time.

Fernandez also does not provide information as to whom he intended to send mail using the envelopes for social correspondence or that he was unable to communicate to those individuals by other means during the two week period prior to receiving his postage-paid social envelopes. Thus, Fernandez has not specifically alleged that the defendants actually prevented him from communicating with outsiders during that two week period. See Davidson v. Mann, 129 F.3d 700, 701 (2d Cir. 1997) (holding that "[a]bsent a specific allegation indicating that the directive ha[d] significantly impaired Davidson's ability to communicate with outsiders," Davidson had not stated a civil rights claim under Section 1983). Accordingly, Fernandez's claim of denial of postage-paid envelopes in August 2002 fails to state

a claim upon which relief may be granted. The defendants' motion for summary judgment is granted on this ground.

3. Failure to Respond to Grievances

Fernandez alleges that defendants violated his constitutional right to petition the government for redress of grievances by failing to respond to the appeals of two grievances pertaining to the defendants' alleged failure to provide him with hygiene items and free envelopes. In response, defendants state that they are not arguing that Fernandez failed to exhaust his administrative remedies as to the claims in amended complaint. They argue that interference with the right to petition for redress of grievances states a claim for relief only if the interference caused actual harm.

State of Connecticut Department of Correction Administrative Directive 9.6 governs the inmate grievance procedure. See www.ct.gov/doc/LIB/doc/PDF/AD/ad0906.pdf. The directive governs inmate access to grievance forms and describes the procedure for timely resolution of grievances.

In Graham v. Henderson, 89 F.3d 75, 80 (2d Cir. 1996), the Second Circuit reiterated that the right to petition the government for redress of grievances is guaranteed by the First and Fourteenth Amendments. A claim of intentional interference with the right to petition the government is not actionable unless the interference caused actual harm, though. See id. The

defendants do not argue that Fernandez has failed to exhaust his administrative remedies as to the claims in this action. The claims concerning the denial of hygiene items and denial of free envelopes were addressed by the court in the preceding section of this ruling. Thus, Fernandez has not demonstrated that he was harmed by the defendants' failure to respond to the appeal of two of his grievances.

To the extent that Fernandez's claims may be construed as alleging that defendants filed to comply with the procedures set forth in Administrative Directive 9.6, the claim is not cognizable. This district has previously held that failure of a correctional official to comply with the institutional grievance procedures is not cognizable in an action filed pursuant to 42 U.S.C. § 1983, unless the action caused the denial of a constitutionally or federally protected right. See Fernandez v. Armstrong, Case No. 3:03CV583(JCH) (D. Conn. Dec. 7, 2004); Ruocco v. Tung, No. 3:02CV1443(DJS), 2004 WL 721716, at *14 (D. Conn. Mar 30, 2004); Hunnicutt v. Armstrong, 305 F. Supp. 2d 175, 188 (D. Conn. 2004) (grievance procedure).

The court has determined that the defendants have not violated Fernandez's constitutional rights when they temporarily failed to provide him with free hygiene items and free envelopes. Thus, Fernandez has not identified any constitutionally or federally protected right that was violated by defendants'

failure to comply with Department of Correction's grievance procedures. The court concludes that any claim that defendants failed to comply with administrative directives does not demonstrate the denial of a constitutionally or federally protected right. Accordingly, such a claim is not cognizable in this civil rights action. The defendants' motion for summary judgment is granted as to any claim for failure to follow institutional grievance procedures.

4. Failure to Promulgate Directives

Fernandez contends that the defendants failed to promulgate directives containing mandatory language to create a liberty interest in humane prison conditions. The court can discern no constitutionally protected right to have correctional officials promulgate such directives.

In addition, defendants argue that even if such directives existed, inclusion of mandatory language in a prison directive does not, without more, give rise to a liberty interest protected by the due process clause. See Sandin v. Connor, 515 U.S. 472, 483 (1995). An inmate has a protected liberty interest "only if the deprivation . . . is atypical and significant and the state has created the liberty interest by statute or regulation." Id. (citations and internal quotation marks omitted). Accordingly, the motion for summary judgment is granted as to Fernandez's claim that the defendants failed to promulgate directives.

5. Other Claims

Fernandez generally claims that the defendants retaliated against him for exercising his right of access to the courts and that mandatory language in the Department of Correction Administrative Directives created a liberty interest protected by the Due Process clause. The defendants argue that Fernandez has failed to allege facts to put them on notice of the nature and basis of these claims.

a. Retaliation Claim

To state a claim for retaliation, the plaintiff must allege facts demonstrating "first, that he engaged in constitutionally protected conduct and, second, that the conduct was a substantial or motivating factor for the adverse actions taken by prison officials." Bennett v. Goord, 343 F.3d 133, 137 (2d Cir. 2003). "[A]llegations which are nothing more than broad, simple, conclusory statements are insufficient to state a claim under § 1983." Alfaro Motors, Inc. v. Ward, 814 F.2d 883, 887 (2d Cir.1987) (citing Koch v. Yunich, 533 F.2d 80, 85 (2d Cir. 1976); Fine v. City of New York, 529 F.2d 70, 73 (2d Cir. 1975)). Because of the "ease with which claims of retaliation may be fabricated," however, the court "examines prisoners' claims of retaliation with skepticism and particular care." Colon v. Coughlin, 58 F.3d 865, 872 (2d Cir. 1995). "A claim of retaliation that is 'wholly conclusory' can be dismissed on the

pleadings alone." Graham v. Henderson, 89 F.3d 75, 79 (2d Cir.1996) (quoting Flaherty v. Coughlin, 713 F.2d 10, 13 (2d Cir. 1983)).

Here, Fernandez simply states that the defendants retaliated against him for exercising his right of access to the courts. Fernandez fails to allege any facts or present any evidence to suggest that there was a retaliatory motive for any of the conduct of the defendants in response to his requests for hygiene products and envelopes. The court concludes that Fernandez has failed to allege facts stating a claim for retaliation. Accordingly, defendants' motion for summary judgment is granted as to this claim.

b. Due Process Claim

Fernandez claims that Department of Correction Administrative Directives contained mandatory language that created liberty interests protected by the Due Process Clause of the Fourteenth Amendment. Fernandez states that the defendants violated his rights under the Due Process Clause because they failed to comply with the mandatory language in the Administrative Directives.

As discussed earlier in this ruling, the Supreme Court has held that mandatory language in a prison directive or regulation does not in and of itself create a liberty interest. See Sandin, 515 U.S. at 483 (inmate has a protected liberty interest "only if

the deprivation . . . is atypical and significant and the state has created the liberty interest by statute or regulation."). Furthermore, Fernandez fails to identify the Administrative Directives with which the defendants allegedly failed to comply. Without documentary support, his Due Process claim consists only of unsupported allegations that are conclusory at best. Thus, Fernandez fails to state a claim of a violation of his Fourteenth Amendment Due Process rights. The defendants' motion for summary judgment is granted as to this claim.

E. State Law Claims

Defendants contend that the court should decline to exercise supplemental jurisdiction over any state law claims contained in the amended complaint. The court agrees.

Supplemental or pendent jurisdiction is a matter of discretion, not of right. See United Mine Workers v. Gibbs, 383 U.S. 715, 715-26 (1966). Where all federal claims have been dismissed before trial, pendent state claims should be dismissed without prejudice and left for resolution to the state courts. See 28 U.S.C. § 1367(c)(3); Giordano v. City of New York, 274 F.3d 740, 754 (2d Cir. 2001) (collecting cases).

The court has dismissed all federal claims against the defendants. Thus, the court declines to exercise supplemental jurisdiction over any state law on the ground that it has dismissed all claims over which it has original jurisdiction.

The motion for summary judgment is granted on this ground.

IV. Conclusion

The defendants' Motion for Summary Judgment [**doc. #40**] is **GRANTED.** The court declines to exercise supplemental jurisdiction over any state law claims raised by the plaintiff. See 28 U.S.C. § 1367(c)(3). The Clerk is directed to enter judgment in favor of defendants and close this case.

**SO ORDERED** this 30th day of March, 2005, at Hartford, Connecticut.

/s/ CFD
Christopher F. Droney
United States District Judge